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P.10/11

JAN 23 2007

Serial No. 10/077,639
Docket No. NEC 01FN073
Amendment E under Rule 116.

REMARKS

The allowability of claims 12 and 13 is noted with thanks. Claims 12 and 13 have been amended to incorporate the claims from which they depend. Claim 13 also has been amended to correct a clerical error. No new matter has been entered by any of the foregoing amendments.

The rejection of claims 1, 10 and 11 as obvious over "Kikuchi as applied to claims 1-2 above in view of Tateishi et al., US. Patent 6,581,048", the Examiner is in error (sic). Kikuchi et al. does not teach the thickness error being computed from the absolute values of either the positive and negative peaks of the focus signal or the sum signal and the focus signal, as required by claim 1. (Figs. 5 and 6, col. 5, Eq. 3). Tateishi et al. does not supply the missing teachings. Tateishi et al. teaches a mechanism for position of a light beam. Thus, no combination of the references can teach claim 1, or claims 10 and 11 which are dependent thereon.

Claim 2 is also allowable for the reasons above adduced relative to claim 1. Rejoinder of claim 2, and allowance thereof are respectfully requested.

The foregoing Amendment makes no claim changes that would require further search by the Examiner. Thus entry of the foregoing Amendment and allowance of all the claims is respectfully traversed.

Form PTO-2038 authorizing credit card payment in the amount of \$100.00 to cover the cost of the added independent claims accompanies this Amendment.

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PAGE 10/11 * RCVD AT 1/23/2007 3:51:41 PM [Eastern Standard Time] * SVR:USPTO-EFXRF-3/4 * DNIS:2738300 * CSID:520 8827643 * DURATION (mm:ss):03:06

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In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION VIA FACSIMILE

I hereby certify that this correspondence is being sent via facsimile to EXAMINER Gautam Patel of the United States Patent and Trademark Office at facsimile number (571) 273-8300, on January 23, 2007 from Tucson, Arizona.

By Gautam Patel

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